HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.23281 of 2004

Date: 16th November, 2006

Between :-

G. Venkateswarlu .. Petitioner

And

The Superintendent Engineer,
Panchayat Raj Department, Guntur,
Guntur District and 3 others ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.23281 of 2004

ORDER:-

1. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in enhancing the rate of the rice over and above the price fixed at the time of supplying and deducted the difference of the amount from the final bill dated 25-6-2004, as arbitrary, illegal, unauthorized and impermissible, consequently direct the respondents to pay the amount which was kept with the 4th respondent as a deposit to the petitioners and to pass such other suitable orders.

2. Sri Vasireddy Prabhunath, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also the grounds raised in the additional affidavit submitted along with the application W.P.M.P.No.30840/2004 and would contend that the in the facts and circumstances the deduction cannot be justified. The learned Counsel also would explain the stand taken in the counter affidavit and would contend that even otherwise there is discrimination and the deduction was made only in the case of the writ petitioner and all other similarly placed had been left untouched in the District.

3. The learned A.G.P. for Panchayat Raj had taken this Court through the averments made in the counter affidavit and would submit that in the facts and circumstances the relief prayed for cannot be granted.

4. Heard the Counsel.

5. In the light of the facts, which had been explained, W.P.M.P.No.30840/2004 is hereby ordered permitting the petitioner to raise additional grounds specified in the additional affidavit.

6. The petitioner had stated that he is a registered contractor and had undertaken the contractual works in respect of various contracts awarded by the Government and its Agencies and in the present case, the petitioner entered into an agreement No.1/2001-2002dd 18-5-2001 for the work of BT to road from Varangani to Kopparru (via) Anaparru and the said contract work is a NABARD assisted work and it is not come under the food for work scheme. It is further stated that though there is no condition under the terms of the contract, the respondents 1 and 2 insisted to receive the rice and to distribute the same to the labour as if the contract is under the food for work program and supplied 176.79 M.Ts., of rice to the petitioner at the rate of Rs.5.65 ps., per K.G., for the purpose of distributing 10 Kgs., rice for each mandage. It

is also further stated that as per the instructions of the authorities the above said rice supplied to the petitioner was distributed to the labour and the value of the rice supplied to the petitioner was determined by the respondents and at the time of supply the said rice is as Rs.9,98,864/- and the said amount was recovered from the part payment bills and as such there is no amount due for the rice supplied to the petitioner. It is also stated that the petitioner had completed the contractual work awarded to the petitioner by the 1st respondent and the amounts in respect of the said contract work executed by the petitioner is payable by the respondents. The respondents while paying the final bill of the said contract work executed, arbitrarily enhanced the rate of the rice at Rs.6.80 ps., per KG., and deducted an amount of Rs.2,03,309/- as the difference of the amount from the amount payable to the petitioner, even without giving notice and opportunity to the petitioner. The said action cannot be sustained.

7. In the additional affidavit filed by the petitioner in this regard, it was pleaded that on legal advise that it is a settled principle of law that Article 14 of the Constitution of India applies also to matters of Governmental policy or any action of the Government even in contractual matters,

fails to satisfy the test of reasonableness, it would be unconstitutional and it was also pleaded that when all other contractors in other divisions were not being subjected to the recovery of the enhanced rate for the rice supplied and distributed to the labour during the year 2002, such differential treatment would amount to arbitrary discriminati9on, violative of Article 14 of the Constitution of India and the same cannot be permitted. Several other factual details relating to the discriminatory treatment also had been averred. Further it was stated that the supply of rice to the petitioner for the purpose of distributing the same to the labour and recovery of the value of rice by the respondents would not come under the purview of the contract entered into in agreement No.1/2001-2002 and the terms and conditions of the above said contract is not a work covered under the 'food for work program' and the said work would fall under NABARD Assisted Rural Roads Project and hence the Writ Petition is maintainable. Several other factual details also had been narrated.

8. In the counter affidavit filed by respondent No.1, it was stated that the work "BT to the road from Varagani to Kopparru (via) Anaparru" estimated at Rs.90.50 lakhs had been sanctioned under NABARD program and awarded to G.Venkateswarlu, Contractor, Unnava on Tender basis

at 9.90% excess over Estimate rates and the contractor had entered into agreement on 18-5-2001 with Superintending Engineer, Panchayat Raj, Guntur. It is also stated that the Government of A.P., has introduced the Food for Work Program (herein called as FFW Program) with an object to provide wage employment to ensure food security in the drought effected area and that the Government has declared 22 Districts as drought effected areas and the Government of India had allocated rice for implementing Food for Work Program. It is further stated that the Government of A.P., issued guidelines for implementation of FFW Program and as per para 8.1 of guidelines vide Government Memo.No.43851/Rlf.II/2001-03, dt.29-3-2001, the scheme should extend to all the works of all the Departments and where the labour component is involved, all works taken up under NABARD aimed at creation of durable assets can also be dovetailed with the FFW Program. It is also further stated that keeping in view of the guidelines of the FFW program, the work “BT to the road from Varagani to Kopparru” was also dovetailed with FFW program and accordingly rice was issued to the Contractor based on the labour component involved for the issue of labour engaged by the Contractor in the work the said release of rice was

done as and when the contractor produced muster role. It is also further stated that as per para 12.1 of the guidelines issued by the Government there are 3 options for payment of wages per man-day as follow:-

Option 1 :- 5 Kgs., of rice + Rs.30/- in cash
Option 2 :- 8 Kgs., of rice + Rs.10/- in cash
Option 3 :- 10 Kgs., of rice without any cash.

The PR & RD (Progs.III) Department in Memo No.30860/Progs.II/A2/2001-1, Dt.19-9-2001 had issued certain guidelines and as per para 4.1 of these guidelines, the rates of labour as prescribed in the (SSR) Standard Schedule of Rates prevailing the area of execution shall be followed and the rate of labour per man-day as per SSR during that period is Rs.68/- per day. It is also stated that in Government Memo.No.27784/Rlf.II/2002, dated 23-6-2002 of Commissioner for Relief, it was clarified that the number of man-days has to be arrived based on any on the following methods:-

1) $\frac{\text{Total Value of wage component of work}}{\text{Minimum out turn of work per minimum Wage prescribed.}}$ = No. of mandays in that work

2) $\frac{\text{Total value of wage component of work}}{\text{Minimum wage in that work}}$ = No. of mandays on that work

Value of labour component involved on the work = Rs.12,02,173/-

No. of Mandays generate = $\frac{\text{Rs.12,02,173/-}}{\text{Rs.68/-}}$ = 17679 Nos.

When we pay Rice = Rs.17679 x 10 Kg/Head/Day = @ 5.65 = 9,98,864/-

When we pay cash = Rs.17679 x Rs.68/- Head/Day = Rs.12,02,173/-

Since the wage earned based on SSR out turn which will be arrived from civil Engineering data Labour component = Manday

Minimum Wage

It is also further stated that in the above case the man-day generated are Rs.17679/- only and eligible to draw 176.79 M.T., @ 5.65 Kg/Head per day @ 10 Kg., or 56.50 or = 998864.00 and no extra cash is allowed. Hence, the difference Rs.68.00 – 56.50 = 11.50. It is also further stated that 10 Kgs., of rice was distributed to the labourers as a cash component for a man-day and the object of this man-day is Rs.68/- per head/per day as the petitioners supplied 10 Kgs., of rice per day/per head which is equal to Rs.68/- as per SSR adopted and the cost of rice per KG is equal to Rs.6.80 ps., (Rs.68/- for 10 Kgs.). It is also stated that Rs.6.80 ps., was recovered per 1 KG of rice which is based on the muster role maintained by the contractor. It is also stated that since the contractor opted and marked attendance @ 10 KG/head per day as per option 3rd of Food for Work 12.1 para of guidelines, consequently Rs.6.80 ps., per KG was fixed. It is further stated that the quantity of 176.79 MTs., of rice was issued in different spells depending on the progress of works at

the rate of 10 KGs., of rice per man-day to the labour engaged on this work through the contractor. It is further stated that part payments were made to the contractor based on the progress of work and cost of rice was recovered at Rs.5.65 ps., as part adjustment in the bills against the rice distribution. It is also stated that during the execution of work the District Collector had issued Circular Instructions in Rc.No.3181/01/D4, dt.22-8-2002 reiterating the Government instructions and instructed that no cash shall be paid to the labour or the Executive Agency by the Department, where 10 Kgs., of rice is given per man-day and the cost of man-day prevailing as per SSR by the time of execution is Rs.68/- since the prevailing rate of man-day is Rs.68/- per day as per para 12.1 of the guidelines of Food for Work. It is further stated that the rice was issued to the labour through the contractor with his consent and the final claim was also settled and accepted by the contractor and final payment was made. It is also further stated that the contractor accepted all the payments including Final Bill and settled all the accounts and signed the Release and Discharge Certificate and the contract work was completed on 31-5-2002 and the final bill was paid on 30-6-2004 and the final deposits were refunded on 18-10-2004 and as such there

are no claims pending before the Department. It is also further stated that the Writ Petition itself is not maintainable since the petitioner had no enforceable right as covered by the Judgment of this Court in W.P. No.22938/2002 and the Judgment of the Division Bench of this Court dated 17-3-2003 in W.P.No.22922/2002. The said Writ Petition was filed by the petitioner in relation to the work formation of road which was dismissed. The observations made by the Division Bench are as under:-

> "The very fact that for during the work, rice has been distributed to the labourers on muster role basis at the rate of 10 Kgs., per manday per labour under the 3rd option as per the guidelines issued by the Government, we are of the view that such like Writ Petitions in which the petitioner has no enforceable right, we are not inclined to entertain the Writ Petition under Art.226 of the Constitution of India."

Hence, specific stand is taken that the Writ Petition is not maintainable.

9. The twin grounds which had been urged in elaboration by the Counsel for the writ petitioner are that the ground of discrimination and also yet another ground that this would not fall under Food for Work Program but under NABARD scheme. There is no doubt true that the decisions referred to in W.P.No.22938/2002 and also W.P.No.22922/2002 are in relation to the works allotted

under Janmabhoomi and Food for Work Program and may not be falling under the NABARD scheme. However, the observations made by the Division Bench while considering the similar question may have to be taken into consideration. The next ground which may have to be looked into is the ground of discrimination. It is no doubt stated that in no other cases deductions had been made in the District and certain averments were made on this aspect, in fact, was not specifically denied and that being so, there is discrimination. When similar questions, may be, in relation to the Food for Work Program, had been already considered by the Division Bench and also by the learned single Judge and the decisions are placed before this Court, merely because this falls under NABARD scheme and such ground is taken by the writ petitioner, this Court is of the considered opinion that this would not seriously alter the situation as far as the maintainability of the Writ Petition is concerned. In view of the same, the Writ Petition being devoid of merit, the same shall stand dismissed. No order as to costs.

Justice P.S.Narayana

16th November, 2006

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